

# Civil Motion Practice

## A. REQUIREMENT TO SEEK CONCURRENCE:

The Court requires adherence to E.D. Mich. LR 7.1(a). Requirements for discovery motions are set forth under the Discovery section of these Practice Guidelines.

## B. BRIEFS AND BRIEFING SCHEDULE ON MOTIONS:

The Court adheres to E.D. Mich. LR 5.1 and 7.1 regarding format and form of motions and briefs, and the type of briefs required and permitted. In addition, all briefs must contain an index of exhibits, and the Court suggests a table of contents for briefs over ten pages.

Deviations from the length and/or timing of briefs under these Rules must be by leave of Court. Failure to file timely briefs may result in those briefs being stricken, and untimely reply briefs may not be considered. Tendering of courtesy copies is addressed separately below.

## C. HEARINGS/ORAL ARGUMENT ON MOTIONS:

Except in *pro se* prisoner cases, the Court generally hears oral argument on civil motions.

Upon filing or referral, the Court will notify the parties of the date and time of a hearing.

However, pursuant to E.D. Mich. LR 7.1(f), the Court may cancel a scheduled hearing or decide the matter without a hearing where the issues can be decided on the briefs.

## D. COURTESY COPIES:

If a motion, response or reply (including exhibits) totals more than 20 pages, a courtesy copy of the motion and exhibits shall be provided to the Court's chambers, either by hand delivery or by mail within five days of the date it was electronically filed. Exhibits on the courtesy copy must be separated by tabs, and relevant portions of exhibits must be highlighted. The courtesy copy should be a filed copy containing the electronic date stamp on the top.

## E. ORDERS:

Generally, the Court prepares its own orders. However, if a motion is resolved prior to hearing or decision, the Court may require the parties to prepare and file a stipulation and proposed order.

# Discovery

The Court expects parties and counsel to conduct discovery cooperatively and fairly. On motions for discovery that have been referred to the magistrate judge, counsel is required to meet and confer in accordance with E.D. Mich. LR 37.1 in an attempt to resolve, or at least narrow, the disputed issues. Accordingly, parties are directed to meet and confer either face-to-face or by telephone in advance of the hearing for **an item-by-item discussion of each issue in dispute**. If unresolved issues remain, the parties shall file a Joint List of Unresolved Issues setting forth the issues that remain unresolved. The Joint List shall not exceed five pages, and should be structured as follows:

Unresolved Issue No. 1: [Recite Issue]

- Movant's position
- Respondent's position (including any proposal made to resolve movant's request)

No exhibits or attachments shall be filed with the Joint List. The list must be e-filed at least two business days prior to the hearing.

This meet-and-confer requirement is not satisfied by an email exchange or messages left unanswered, or by mere compliance with LR 7.1, which requires the moving party to seek concurrence in a motion. Where a conference has not been conducted, the moving party is to submit a written statement to the Court outlining all steps taken to undertake a conference with the opposing party. Any party refusing to appear for the conference or to confer as the Court directs will be subject to sanctions.

When the district judge has expressly referred all pretrial proceedings to the magistrate judge, the Court is available to conduct an informal discovery conference to resolve pressing discovery disputes. However, the parties should still make a good-faith attempt to engage in the LR 37.1 conference ahead of this informal telephone call.

In a particular case, where there are multiple discovery disputes or where many motions are filed, the Court may set the matter for a general discovery conference or direct the parties to conduct a Rule 26(f) conference.

## **Scheduling/Status Conferences**

When a case has been referred for all pretrial proceedings, the Court may hold status, scheduling or discovery conferences as required or necessary. If counsel believes that any such conference would be productive, counsel may request one by calling the case manager. Such conferences may be in person or by telephone.

## Settlement Conferences

The Court encourages parties and counsel to consider voluntary settlement conferences when and where appropriate. The Court is willing to serve as a facilitator upon the parties' request and/or an order of reference. Based on the nature of the case and the state of settlement negotiations, the Court will be prepared to devote the entire day for the conference.

**Seven** days before the settlement conference, each party shall submit by hand, fax or email a confidential, ex-parte settlement statement directly to the chambers of the Honorable Elizabeth A. Stafford, United States Magistrate Judge. **DO NOT FILE THESE STATEMENTS WITH THE COURT.** The statements shall be limited to ten pages, and shall include the following **clearly marked sections**:

- a. A brief description of the background and nature of the case;
- b. The party's perceived strengths;
- c. The party's perceived weaknesses;
- d. A statement identifying each cause of action at issue, and the remedies available under each of those causes of action;
- e. A summary of all settlement discussions that have taken place to date, including the **specific amount** of any offers and counter-offers that have been made;
- f. The **specific amount** of the party's opening settlement offer for the purpose of the conference.

**The parties may not attach exhibits to their settlement statements, including any pleadings or motions (whether or not they have already been filed).** Counsel should be mindful that the Magistrate Judge who is facilitating settlement is not trying the case or deciding dispositive motions at this point.

At the settlement conference, the parties and their attorneys are expected to conduct themselves in a business-like manner and to negotiate in good faith. Posturing and other theatrics are prohibited.

**INDIVIDUALS WITH FULL SETTLEMENT AUTHORITY SHALL BE PERSONALLY PRESENT AT SETTLEMENT CONFERENCES. IF THE INDIVIDUALS WITH FULL SETTLEMENT AUTHORITY RESIDE OUT OF THE STATE, A PARTY MAY REQUEST PERMISSION TO HAVE SUCH INDIVIDUALS PARTICIPATE BY TELEPHONE. IF AN ATTORNEY MUST CONSULT WITH AN INSURANCE COMPANY AGENT IN ORDER TO PARTICIPATE MEANINGFULLY IN SETTLEMENT DISCUSSIONS, SUCH AGENT MUST BE PRESENT AS WELL. A PARTY APPEARING AT THE CONFERENCE WITH AUTHORITY TO SETTLE FOR ONLY A LIMITED AMOUNT WILL BE IN VIOLATION OF THIS ORDER.**

## Pro Se Prisoner and Habeas Cases

These matters are generally decided without oral argument. Notices, Orders, and Reports and Recommendations are mailed to those parties who are not e-filers. The Court does not have funds to appoint counsel for unrepresented persons, but will consider appointment of *pro bono* counsel in appropriate cases. *Pro se* litigants are expected to adhere to the Federal Rules of Civil Procedure as much as possible. The Court does not give legal advice to litigants and expects that pleadings will be in appropriate form. Letters to the Court are not pleadings and will be returned.

## **Social Security Cases**

Oral argument will generally be held in Social Security cases when the parties have consented to full adjudication before this Magistrate Judge, pursuant to 28 U.S.C. § 636 and E.D. Mich. LR 73.1. Otherwise, oral argument will not be held. If service of the complaint is not reflected on the docket within 120 days of issuance of the summons, the Court will issue an order to show cause to the plaintiff.

Upon the filing of the transcript and answer, the Court will issue a scheduling order setting the deadlines for the filing of motions, responses, and the reply. Requests for adjournment of those days must show good cause. A proposed order is not needed.

### **Please adhere to the following practice guidelines when filing motions or briefs for Social Security cases:**

Motions or briefs shall cite to the administrative record using the following format: docket number–docket subpart, transcript page number. So, for example, if a party is citing to a portion of the ALJ's decision, the citation would look something like: [R. 13-2, Tr. 29]. Motions and briefs that do not use this format will be stricken and must be corrected before refiling.

# **Criminal Duty Procedures**

Agents with requests for warrants, complaints, and other matters should report to the duty courtroom and then to chambers for review of the papers.

# **Trials**

## **A. PRETRIAL**

The Court will conduct a Final Pretrial Conference (“FPTC”) prior to the first day of trial in civil cases. Trial counsel for all represented parties, and all parties proceeding *pro se*, must appear at the FPTC and have settlement authority. During the FPTC, the Court will set a trial schedule, discuss *voir dire*, rule on motions *in limine*, and resolve disputes over exhibits and jury instructions to the extent possible.

The parties are required to confer and finalize a concise Joint Final Pretrial Order (“JFPTO”) that is approved and signed by all parties or their counsel. Unless directed otherwise by the Court, the original and one copy of the JFPTO must be delivered to the magistrate judge’s chambers no later than five days before the FPTC. The Court will not extend the date for submission of the JFPTO. The Court has a standing Order Regarding Joint Final Pretrial Order and Final Pretrial Conference that provides in detail the information required in the JFPTO. In all other respects, E.D. Mich. LR 16.2 applies.

Motions *in limine* are generally due three to four weeks before trial, and responses are due one week after that. Motions *in limine* will be decided in advance of the first day of trial whenever possible.

## **B. TRIAL**

Trials are scheduled for dates certain. The Court will provide a written schedule of the time and days set aside for trial on the first day. Counsel should plan the availability of their witnesses according to the schedule. To avoid interruptions, counsel should alert the Court of matters that need addressing outside of the presence of the jury before or after the trial day, or over lunch breaks.

## **C. CRIMINAL TRIALS**

Trial briefs and witness lists must be filed three days before the commencement of trial in all criminal cases.

## **D. NON-JURY TRIALS**

The parties must file trial briefs and proposed findings of fact and conclusions of law no later than three days before a bench trial is scheduled to begin. Proposed findings and conclusions may be supplemented or amended at the conclusion of trial. In addition to filing the proposed findings and conclusions, parties must deliver to the magistrate judge’s chambers electronic versions of those documents that are compatible with Microsoft Word or WordPerfect. Electronic versions may be submitted by e-mail, compact disk, or a USB portable drive.



